which it was acquired. Lacking a submission by a State indicating the intent to sell property in accordance with the provisions of § 480.109(b)(2) or a submission by the State for waiver of paycheck within 10 years of withdrawal and actual reuse within 10 years of withdrawal, the FHWA will require that the pro rata share of the current fair market value of the property be credited to Federal funds in accordance with § 480.109(b)(1).

(c) Nothing in this part shall be considered to affect or conflict with the obligations of States with respect to the right-of-way (ROW) revolving fund pursuant to 23 U.S.C. 108(c).

§ 480.105 Definitions.

For purposes of this part:

Acquired in the case of real property means that title has been passed to the acquiring agency, or a legal obligation to complete the purchase of such real property has been established; or, in the case of construction, that work has been performed, or materials obtained, and payment is due under the contract provisions.

Applied to a reuse under this part means that construction leading to the reuse, or the reuse itself, has begun on the real property or that construction leading to the reuse, or the reuse itself, has begun on the site where the construction items and materials will be incorporated into another project.

Intangible items means items having no physical existence or recoverable value, e.g., preliminary engineering, construction engineering, appraisals, relocation payments, etc.

Property means land, and/or interests therein, including improvements, structures and appurtenances thereto, and any other acquired items having a physical existence but not yet physically incorporated into the project (such as construction items, materials, movable equipment and machinery).

§ 480.107 Reuse of property.

(a) This section applies to:

(1) Property acquired in connection with an Interstate highway segment withdrawn before November 6, 1978; or

(2) Property acquired before November 6, 1978, in connection with an Interstate highway segment withdrawn on or after November 6, 1978, if the final environmental impact statement for the segment had not been approved prior to the date of withdrawal.

(b) When property to which this section applies is no longer needed for the Interstate highway project for which it was acquired because of withdrawal of such Interstate segment, the State may, subject to the provisions of this section, reuse the property without being required to make payback, for:

(1) A transportation project permissible under title 23 U.S.C.;

(2) A public conservation or public recreation purpose; or

(3) Any other public purpose determined by the FHWA to be in the public interest.

(c) In order to request a waiver of payback for reuse of the property without being required to make a credit to Federal funds, the State shall submit to the FHWA the following information (States are encouraged to submit a comprehensive reuse plan, covering all property, rather than individual submissions for each piece of property):

(1) A description of how the State, or political subdivision thereof, or any of their agencies or instrumentalities, has reused or proposes to reuse the property and how such use satisfies paragraph (b) of this section. Only that property actually needed for a known reuse will be considered for waiver of payback. The intent of paragraph (b) of this section is to enable the States to avoid payback if the property is reused for publicly owned and operated facilities providing government services. To this end, the State shall indicate if any of the property involved was or will be transferred directly or indirectly to any private party in connection with the reuse. The State shall justify to the FHWA why reuse by a private party, without a requirement for credit to Federal funds, is considered a public purpose in the public interest. As a minimum, justification for such a transfer would have to show that property value estimates indicate the property has nominal value, and/or that proposals to competitively dispose of the property have generated little market interest.

(2) A certification that the current rights under State law of persons owning the real property immediately prior to such property being obtained by the State have been observed;

(3) An assurance that no major alteration in the reuse will be made without resubmitting the particulars of the individual case to the FHWA for another payback determination; and

(4) An assurance that the State will assume all obligations with respect to providing relocation assistance benefits to those persons described in §480.113 after the FHWA's obligations are terminated in accordance with §480.113.

(d) The State should also make the following information available in order to facilitate processing of a payback determination:

(1) The date the property was acquired;

(2) The withdrawal date of the Interstate segment for which the property was acquired;

(3) The approval date of any final environmental impact statement for the Interstate segment for which the property was acquired;

(4) The amount of Federal funds expended for the property to be reused; and

(5) Any additional related information requested by the FHWA.

(e) Based on the submission, the FHWA will determine if the State is required to make a credit to Federal funds.

(f) Besides making the basic determination of whether or not the reuse satisfies paragraph (b) of this section, the FHWA will require a credit to Federal funds with respect to property if:

(1) The reuse is inconsistent with any Federal statute applicable to State/local undertakings not federally assisted;

(2) The certifications and assurances required by paragraph (c) of this section are not made;

(3) The property is to form, or its value is to form, part of the State or local matching share with respect to any Federal program; or

(4) The property is transferred to any private party, unless the FHWA determines that such a reuse, without a requirement for a credit to Federal funds, is for a public purpose in the public interest.

(g) If the FHWA determines that the assurances required by paragraph (c) of this section have not been observed, the FHWA will require that a credit to Federal funds be made as provided in §480.109.

(h) While the FHWA does not require that the State be compensated for property reused by others under this section, should there be a payment or intergovernmental credit to the State for sales, leases, rents, etc., the State shall credit Federal funds at the same pro rata share as Federal funds participated in the original acquisition. The credit to Federal funds shall be made as soon as practicable after money or credit is received.

§480.109 Requirement of credit to Federal funds.

(a) This section applies to:

(1) Property for which the FHWA, under §480.107, has determined that a credit to Federal funds must be made;

(2) Property acquired before November 6, 1978, in connection with an Interstate highway segment withdrawn on or after November 6, 1978, if the final environmental impact statement for the segment had been approved prior to the date of withdrawal;

(3) Property acquired on or after November 6, 1978, in connection with a segment withdrawn from the Interstate System; or

(4) Property described in §480.107(a) for which the State elects not to request a waiver of payback.

(b) With respect to property to which this section applies, the State shall credit Federal funds, as soon as practicable, in the following manner:

(1) If the property is retained or transferred without cost, in an amount computed by applying the Federal percentage of participation in the cost of the original acquisition to the current fair market value of the property.

(2) If the property is sold, in an amount computed by applying the Federal percentage of participation in the cost of the original acquisition to the sale proceeds (after deducting actual and reasonable selling or fix-up expenses). Fix-up expenses are limited to